



STATE OF CONNECTICUT
JUDICIAL BRANCH

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Testimony of Stephen N. Ment
Judiciary Committee Public Hearing
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Senate Bill 238, An Act Concerning A Specialized Docket for
Land Use Appeals

Thank you for the opportunity to testify, on behalf of the Judicial Branch, in opposition to Senate Bill 238, *An Act Concerning a Specialized Docket for Land Use Appeals*. This bill would require the Judicial Branch to establish a separate docket in each judicial district to exclusively hear land use cases and, in addition, to assign only judges or state referees with experience in this area to hear those cases.

As we noted last year when a similar bill was introduced by the Planning and Development Committee, the Judicial Branch has consistently opposed legislation that would require the creation of special courts or dockets because, although those courts or dockets might benefit the cases they handle, they take away from the resources available to handle all other cases. More than 88,000 civil cases were pending on our docket at the close of the last fiscal year, and tens of thousands additional cases were pending on our criminal, family and juvenile dockets on June 30th, 2009. The Chief Court Administrator needs to have maximum flexibility in order to move these cases as expeditiously as possible. This bill reduces that flexibility in two key ways: by creating a specialized docket for one particular type of case, and by restricting her ability to assign judges in a manner that best meets the needs of the entire Judicial Branch.

While we cannot support this bill, the Branch does recognize the unique nature of administrative appeals generally, and land use cases specifically. The Chief Justice's Public Service and Trust Commission, Committee on the Uniformity of Court Procedures, and the Office of the Chief Court Administrator have each taken an active role in addressing the concerns that practitioners have brought to our attention. We believe this collaborative approach between the bench and bar is the best method of improving court processes.

For example, beginning last spring, a work group formed by the Committee on Uniformity of Court Procedures- which included land use attorneys - began discussions on how land use procedures could be made more uniform and efficient. The result of their efforts is a proposed "Policy and Procedures on Land Use Appeals and Standing Order on Land Use Appeals" which I have attached to this testimony. Notably, the draft policy states that:

1. Each judicial district will implement and maintain a separate calendar for land use appeals. This calendar- modeled on the New Haven Judicial District's current practice - would handle all administrative matters and short calendar arguments for land use appeals; and
2. A judge will be appointed to hear each appeal at least a month before the established trial date, to the extent possible.

We expect this policy and standing order to be finalized and implemented in April, with the first land use calendars to be scheduled in May.

Another example of our collaborative approach arose this past fall when a concern regarding e-filing was brought to the attention of the Chief Court Administrator. As you may know, e-filing of all civil case types, with very few exceptions, became mandatory on December 5th, 2009. Land use lawyers brought to our attention particular difficulties that the mandatory e-filing requirement would create for them - specifically, that it would be difficult for the municipalities that they represent to e-file returns of record. Returns of Record in land use appeals can include regulations of the municipality, site plans, large, detailed maps, and transcripts of public hearings, all of which can be voluminous. As a result of this feedback from the land use attorneys, a temporary exemption was granted by the Chief Court Administrator until a more permanent solution can be achieved. A collaborative effort is under way with representatives from the Planning & Zoning Committee of the Connecticut Bar Association to address these concerns, including the revision of the current rules regarding administrative appeals.

I offer these examples to demonstrate that the Judicial Branch has made a significant effort to address any and all concerns presented by the land use bar. We believe that our efforts have been widely appreciated by the practitioners. This collaborative approach to problem-solving has not only generated good will between the bench and the bar, but has been accomplished without additional state resources.

For all of the reasons stated above, we would respectfully request that the Committee not act favorably on this proposal.

Thank you for the opportunity to testify.

Policy and Procedures on Land Use Appeals

Each judicial district shall implement and maintain a separate calendar for land use appeals.

A judge will be appointed to hear each appeal at least a month before the established trial date and the file will be delivered to the appointed judge at that time for review prior to trial.

Standing Order on Land Use Appeals

1. Subject Matter – This order shall apply to all land use appeals, including appeals taken pursuant to the Connecticut General Statutes Chapters 97a (historic district commissions), 124 (zoning), 125a (local land use ordinances), 126 (planning), 127 (regional planning agencies), or 440 (wetlands), or pursuant to Connecticut General Statutes Sections 22a-354q (aquifer protection agencies) or 7-246a (water pollution control agencies). This order shall not apply to administrative appeals taken pursuant to Connecticut General Statutes Chapter 126a (affordable housing) or Connecticut General Statutes Section 4-183.
2. Administrative Appeals Calendar – Between thirty and sixty days after the return date, the administrative appeal will appear on the administrative appeals calendar for the first time.
3. Appearance at the Monthly Calendar Call - The first time that an administrative appeal appears on the calendar, all counsel and self-represented parties must appear. After the initial appearance at the monthly calendar call, counsel and self-represented parties are excused from the call unless either party has a motion on the calendar.
4. Establishment of a Scheduling Order – At the first calendar call, a scheduling order will be established, which will include a pretrial within thirty days of the order, the filing of the return of record, the submission of briefs, and the hearing on the administrative appeal.
5. Monthly Calendar Call - All motions, including motions to supplement the record, motions for an extension of the briefing schedule, motions to dismiss, motions to amend pleadings and motions to settle cases will appear on the administrative appeals calendar. Parties are not expected to attend the monthly calendar call unless either party has a motion on the calendar which requires argument.
6. Settlements/Withdrawals – The parties may request that motions for settlement or withdrawals be placed on the next available short calendar. Procedures for settling planning, zoning, and wetlands cases shall accord with the notice and hearing requirements of Connecticut General Statutes Sections 8-8 and 22a-43 and Practice Book Section 14-7A.

